

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION  
AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON, DC 20202

INFORMATION MEMORANDUM

RSA-IM-93-17

RSM-1505

Date: May 11, 1993

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)  
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)  
CLIENT ASSISTANCE PROGRAMS  
RSA SENIOR MANAGEMENT TEAM  
REGIONAL REHABILITATION CONTINUING EDUCATION  
PROGRAMS  
RSA DISCRETIONARY GRANTEEES

SUBJECT : Eligibility for Vocational Rehabilitation Services under Title I of the  
Rehabilitation Act of 1973, as Amended

CONTENT : The 1992 Amendments to the Rehabilitation Act of 1973 (the Act) have  
modified the criteria regarding the eligibility of individuals for vocational  
rehabilitation services under title I of the Act. In making these changes,  
Congress intended both to streamline the eligibility determination process  
and to provide greater access to vocational rehabilitation services for  
individuals with severe disabilities. This Information Memorandum  
highlights key elements in these changes. After final regulations  
implementing the 1992 Amendments are published, further guidance  
regarding the eligibility process will be issued. Although the  
Amendments introduced major changes regarding the eligibility criteria  
for the vocational rehabilitation program, the responsibility for  
determining an individual's eligibility for vocational rehabilitation services  
remains with the designated State vocational rehabilitation unit.

Basic Conditions of Eligibility: In order for an individual to be  
determined eligible for vocational rehabilitation services, the individual  
must meet the two criteria identified in section 102(a)(1) of the Act. First,  
the individual must meet the definition of an "individual with a disability"  
as specified in section 7(8)(A) of the Act. This definition has two  
elements: (1) the individual must have a physical or mental impairment  
which, for that individual, constitutes or results in a substantial

impediment to employment, and (2) the individual can benefit from vocational rehabilitation services in terms of an employment outcome. The second criterion for eligibility for vocational rehabilitation services is that the individual must require such services to prepare for, enter, engage in, or retain gainful employment. Thus, an individual who is determined to be an "individual with a disability" and therefore meets the first eligibility criterion, may be found ineligible for vocational rehabilitation services if that individual does not also meet the second criterion, that is, if the individual does not require these services to obtain or retain an employment outcome. An example of an individual who meets the first eligibility criterion while not meeting the second criterion might be an individual with a disability who, at the time of application for vocational rehabilitation services, is already employed and possesses adequate education and training to pursue another employment opportunity.

Presumption of Benefit: In making a determination regarding an individual's eligibility, there is a presumption that the individual can benefit in terms of an employment outcome from vocational rehabilitation services. This presumption of benefit is expressed in the second element of the definition of an "individual with a

disability,"

(sec. 7(8)(A)(ii) of the Act) and is based on the principle of inclusion that is articulated in the Americans with Disabilities Act of 1990 and the policy statements that appear in both section 2(a)(6)(B) and section 100(a)(3)(A) of the Rehabilitation Act. Thus, in evaluating an individual's eligibility for services, vocational rehabilitation counselors must interpret assessment data within the context of this presumption of benefit, i.e., the individual has the capability to work as the result of the provision of vocational rehabilitation services.

The designated State vocational rehabilitation unit can rebut this presumption of benefit only by demonstrating with clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome, i.e., no employment outcome is possible even with the provision of vocational rehabilitation services. The standard of "clear and convincing evidence" constitutes the highest standard used in the American civil system of law. Therefore, in order to conclude that an individual is not eligible for vocational rehabilitation services due to an inability to benefit from such services in terms of an employment outcome, the designated State unit must possess evidence that establishes such a conclusion with a high degree of certainty.

To help explain what would not be considered clear and convincing evidence, the Congressional Committee Reports indicate that the results of an intelligence test or a psychological examination, by themselves, would not constitute clear and convincing evidence of an individual's ineligibility for vocational rehabilitation services. Clear and convincing evidence, however, might be derived from the results of such examinations coupled with additional evidence, particularly evidence drawn from functional assessments that demonstrate that the individual is not capable of benefiting from vocational rehabilitation services. In utilizing the results of such functional assessments, the counselor must assure that the individual is provided with all necessary supports and that the assessment occurs in a real-life setting (H.R. Rep. No. 822, 102d Cong., 2d sess., 98 (1992); S. Rep. No. 357, 102d Cong., 2d sess., 37 (1992)).

Furthermore, the 1992 Amendments stipulate an additional requirement before a designated State vocational rehabilitation unit can make a determination that an individual with a severe disability cannot benefit in terms of an employment outcome due to the severity of the individual's disability. In such cases, the State unit must first conduct an extended evaluation (sec. 102(a)(4)(B) of the Act), thereby providing rehabilitation services to the individual for not more than 18 months for the limited purpose of determining eligibility for and the nature and scope of needed services. The State unit must assess the individual at least every 90 days. Should the State unit conclude at any time during the extended evaluation that the individual is ineligible for vocational rehabilitation services because the individual is incapable of benefiting from such services, the State unit must be able to establish such a conclusion with clear and convincing evidence.

Use of Existing Information: To the maximum extent appropriate, and consistent with the requirements of the Act, existing information is to be used for purposes of determining eligibility for vocational rehabilitation services (secs. 7(22)(A)(i) and 102(a)(3) of the Act). This information may be obtained from other programs and providers, particularly information used by education officials and the Social Security Administration. Such information may also be provided by the individual with a disability or that individual's family. Congress emphasized that, while existing information is to be used, the final decision regarding eligibility rests with the designated State vocational rehabilitation unit.

The rationale for using existing data is to streamline the eligibility determination process and to expedite access to vocational rehabilitation

services for individuals with disabilities. Determinations regarding whether and how specific data are to be used must be made on a case-by-case basis, and while the accuracy and timeliness of existing data are important factors in determining their utility, under special circumstances older data can be used, particularly if such data pertain to an individual whose disability is chronic or permanent.

The statute places special emphasis on the use of information from the Social Security Administration or from State agencies responsible for determining eligibility for the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) programs to determine whether or not an individual meets the definition of an "individual with a disability" (sec. 102(a)(2) of the Act). Specifically, an individual who has a disability or who is blind, as determined under title II or title XVI of the Social Security Act, is (for the purposes of determining eligibility for vocational rehabilitation services) considered to have a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment under section 7(8)(A)(i) of the Act, i.e., the individual meets the first element of the definition of an "individual with a disability." Additionally, an individual who has a disability or who is blind, as determined under title II or title XVI of the Social Security Act, is considered to have a severe physical or mental impairment which seriously limits one or more functional capacities in terms of an employment outcome under section 7(15)(A)(i) of the Act, i.e., the individual meets the first element of the definition of an "individual with a severe disability." Eligibility for the SSDI and/or SSI programs is not tantamount to eligibility for the vocational rehabilitation program, which is a decision that can be made only by the designated State vocational rehabilitation unit. The State unit must still determine whether the presumption that an individual can benefit from vocational rehabilitation services in terms of an employment outcome can be rebutted by clear and convincing evidence, and whether the individual requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

To the extent appropriate and consistent with the requirements of the Act, information available from education officials described in section 101(a)(24) of the Act is also to be used to determine whether an individual satisfies one or more factors relating to whether an individual meets the definition of an "individual with a disability" under section 7(8)(A) of the Act. Congress concluded that information obtained from school records should prove invaluable in determining eligibility for vocational rehabilitation services of students with disabilities transitioning from

educational settings. In fact, Congress expects that such eligibility determinations will be made, to the maximum extent possible, prior to the student exiting the school system.

The statutory emphasis on the use of information from the Social Security Administration and educational institutions is based on the fact that both of these programs have strong relationships with the vocational rehabilitation program under title I of the Act. Congress, however, also intended that information from sources other than education and Social Security officials should be used to expedite the eligibility determination process. Information from any agency or qualified individual is to be considered, if it is appropriate and consistent with statutory requirements. Congressional Committee reports give examples of such sources, including: an individual's personal physician, a previous or current employer, an insurance company, an advocate or representative of the individual, and any organization or individual suggested by the individual with a disability. Additional sources could include mental health and mental retardation agencies, State Medicaid or Medicare agencies, State Worker's Compensation programs, and other State programs that require that a "disability" be established as a condition for the provision of services (H.R. Rep. No. 822, 102d Cong., 2d sess., 97-98 (1992); S. Rep. No. 357, 102d Cong., 2d sess., 31 (1992)). Use of information from such other sources can significantly expedite the eligibility determination process, especially in situations in which such agencies have worked cooperatively to develop comparable definitions, criteria, forms, and qualification standards for staff conducting the assessments.

If existing data are unavailable, insufficient, or inappropriate to make a determination of eligibility, a preliminary assessment should be conducted. This preliminary assessment can be used to help determine whether the individual meets the criteria for eligibility for vocational rehabilitation services. The assessment can include the provision of those vocational rehabilitation services necessary to determine whether the individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. Decisions regarding the nature and scope of the vocational rehabilitation services to be provided during a preliminary assessment must be made on a case-by-case basis; however, the Act in section 101(a)(31) emphasizes the importance of providing assistive technology devices and services and worksite assessments as part of the preliminary assessment.

Timeframe for Determining Eligibility: As described in section 102(a)(5)(A) of the Act, the designated State unit must make an eligibility

determination within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive services. This 60-day timeframe is based on Congress's intention that eligible individuals should receive vocational rehabilitation services expeditiously.

Exceptions to this 60-day timeframe can occur only if (1) the designated State vocational rehabilitation unit notifies the individual that exceptional and unforeseen circumstances beyond the control of the agency preclude the agency from completing the determination within the prescribed time and the individual agrees that an extension of time is warranted or (2) the determination is made that an extended evaluation is necessary to determine the individual's eligibility for vocational rehabilitation services and the nature and scope of services needed. Congress asserted that this 60-day timeframe for determining eligibility is realistic, particularly in situations in which current and relevant information is readily available. Congress also intended that any extension be of short duration and be agreed upon by both the counselor and the individual applying for services.

The changes resulting from the 1992 Amendments to the Rehabilitation Act that are outlined in this Information Memorandum are designed to streamline the eligibility determination process and to enhance the access of individuals to vocational rehabilitation services. Congress intended that the presumption of benefit, the 60-day timeframe for determining eligibility, and the emphasis on the use of existing data would result in a more efficient system that would respond more quickly to individuals with disabilities. With the incorporation of these changes into the State vocational rehabilitation agency's policies and procedures regarding eligibility determinations, vocational rehabilitation counselors will be better able to devote more time to developing plans with individuals with disabilities regarding which services will best meet their rehabilitation needs and career goals.

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Acting Commissioner  
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Administration